

Forest Service, USDA

§ 223.235

bidder unless that officer makes an affirmative determination that the person is responsible. In the absence of information clearly establishing that the declared high bidder is responsible, the Contracting Officer shall conclude that the declared high bidder is not responsible.

(b) In order to make an affirmative determination of responsibility, the Contracting Officer must find that:

(1) The declared high bidder has adequate financial resources to perform the contract, permit, or other authorizing instrument, or the ability to obtain such resources;

(2) The declared high bidder is able to complete the contract, permit, or other authorizing instrument within the relevant term, taking into consideration the declared high bidder's other existing commercial and governmental obligations;

(3) The declared high bidder has a satisfactory record of integrity and business ethics;

(4) The declared high bidder has or is able to obtain equipment and supplies suitable for harvesting the special forest product(s) and for meeting applicable resource protection requirements;

(5) The declared high bidder is otherwise qualified and eligible to receive an award of a contract, permit, or other authorizing instrument under all applicable laws and regulations;

(6) The declared high bidder has a satisfactory performance record on contracts, permits, and other agreements with the U.S. Government. Failure to apply sufficient diligence and perseverance to perform a contract, permit, or other instrument is strong evidence that a declared high bidder is not responsible. A declared high bidder that is, or has been deficient in performance shall be deemed not responsible, unless the declared high bidder demonstrates that the deficiency arose from circumstances beyond their reasonable control.

(c) Affiliated concerns, as defined in 36 CFR 223.49(a)(5), are normally considered separate entities in determining whether the declared high bidder that is to perform the contract meets the applicable standards for responsibility. However, the responsible Forest Officer shall consider an affili-

ate's past performance and integrity when they may adversely affect the responsibility of the declared high bidder.

§ 223.235 Unilateral delay, suspension, or modification of contracts, permits, or other instruments authorizing the sale of special forest products.

(a) *Reasons for delay, suspension or modification.* The Forest Service may unilaterally delay, suspend, or modify any contract, permit, or instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) To prevent actual or potential harm to the environment, including without limitation, harm to land, water, air, habitat, plants, animals, cave resources, or cultural resources;

(2) To ensure consistency with land management plans or other management documents;

(3) To conduct environmental analyses, including, without limitation, consultation under the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*;

(4) Existing or threatened litigation that might affect or involve a person's harvest of special forest products; or

(5) For any reasons or other conditions set forth in the contract, permit, or other authorizing instrument governing the sale.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral delay, suspension or modification of a contract, permit, or other authorizing instrument in accordance with the applicable provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the delay, suspension or modification.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation accompanied by supporting documentation that fully substantiates the claim.

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(c) *Authority to unilaterally delay, suspend or modify.* The Contracting Officer administering the sale or a responsible superior officer may delay, suspend, or modify the contract, permit, or other authorizing instrument by issuing instructions to a person to delay, suspend, or modify operations. Such instructions to delay, suspend or modify shall be issued to a person in writing, except when exigent circumstances warrant oral communication, in which case the officer shall promptly follow-up in writing.

§ 223.236 Unilateral termination.

(a) *Reasons for Unilateral Termination.* The Forest Service may unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) Any of the reasons provided in § 223.235(a);

(2) Material breach or continued violation of the contract, permit or other authorizing instrument;

(3) Violation of any Federal or State laws or regulations related to:

(i) Obtaining, attempting to obtain, selling, trading, or processing special forest products;

(ii) Obtaining, attempting to obtain, or performing a public contract or sub-contract;

(iii) Harming or damaging public lands or protected species; or

(iv) Business integrity, honesty, or responsibility.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral termination of a contract, permit, or other authorizing instrument in accordance with the applicable provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the termination.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation accom-

panied by supporting documentation that fully substantiates the claim.

(3) No compensation shall be provided if the unilateral termination is due in whole or in part to the reasons set forth at § 223.236(a)(2) or (3).

(c) *Authority to unilaterally terminate.* The Chief, or the Chief's designee, has the authority to unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products. Any such termination shall be issued in writing, except when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

§ 223.237 Request for delay, suspension, modification, or termination.

(a) *Request.* A person authorized to harvest special forest products may request delay, suspension, modification, or termination of their contract, permit, or other authorizing instrument pursuant to the provisions set forth in the contract, permit, or instrument, if any, or for another reasonable cause, including without limitation, catastrophic damage to the product or substantially changed market conditions. Any such request must be submitted in writing and include a detailed explanation of all relevant circumstances supporting the request.

(b) *Response.* The Forest Service shall respond to any request for delay, suspension, modification, or termination in accordance with applicable provisions in the contract, permit, or other authorizing instrument, or, in the absence of such provisions, respond in a manner that is reasonable in light of the request's circumstances. The Forest Service may deny any request, in whole or in part, in accordance with the provisions of the relevant contract, permit, or instrument, or, in the absence of such provisions, at the Agency's discretion.

(c) *Authority.* The Contracting Officer administering a sale or a superior officer has the authority to deny or grant any request by a person authorized to harvest special forest products to delay, modify, suspend, or terminate a contract, permit, or other authorizing